



**The Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

**Matter of:** Chicago City-Wide College

**File:** B-235424

**Date:** September 7, 1989

## DIGEST

Solicitation which limits the award of contracts for a given group of courses to a single academic institution in the United States European Command is not legally objectionable where, after consideration of logistical, demographic and economic factors on a theater-wide basis, the procuring agency concludes that its solicitation is the most practicable and will most advantageously fulfill the needs of the military student population.

## DECISION

Chicago City-Wide College (CCC) protests the terms of request for proposals (RFP) No. DAJA37-88-R-0345, issued by the Department of the Army for the acquisition of post-secondary undergraduate education services in the United States European Command. CCC argues that the terms of the RFP violate § 1212(b) of the Department of Defense Authorization Act, 1986, Pub. L. No. 99-145, 99 Stat. 583, 726 (1985), codified at 10 U.S.C. § 113 note (Supp. IV 1986).

We deny the protest.

### Background

In late 1985, Congress passed § 1212 of the Department of Defense Authorization Act, supra, concerning the competing of educational services for military personnel. Section 1212(b), provides that:

"No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the Department of Defense, or the dependents of such members or employees, other than those for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single

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academic institution. However, nothing in this section shall prohibit such actions taken in accordance with regulations of the Secretary of Defense which are uniform for all armed services as may be necessary to avoid unnecessary duplication of offerings, consistent with the purpose of this provision of ensuring the availability of alternative offerors of such services to the maximum extent feasible."

After the statute's passage, the Department of the Air Force issued a solicitation, acting on behalf of itself and for the Army and Navy, for the procurement of off duty undergraduate educational services for the Pacific theater. That solicitation, which limited the award of each category of courses to a single educational institution, was the subject of an earlier protest to our Office. Chicago City-Wide College, B-228593, Feb. 29, 1988, 88-1 CPD ¶ 208 aff'd July 19, 1988, 88-2 CPD ¶ 64. In those decisions, we upheld the actions of the Air Force in limiting the number of educational institutions in each course category on the basis that the agency had reasonably concluded that "unnecessary duplication" within the meaning of the statute, would result if more than one educational provider were permitted to offer courses in each category in the Pacific theater. In reaching that conclusion, we determined that certain "interim guidance" which had been issued by the Office of the Secretary of Defense (OSD) and applied to acquisitions by all branches of the service, properly implemented the statute and properly permitted consideration of various economic, demographic and logistical factors for purposes of making "unnecessary duplication" determinations. In essence, we found reasonable the Air Force's determination because the supply of educational services in the Pacific theater necessarily involved the servicing of many small, minimally equipped installations which were thousands of miles apart and because the Air Force stated that it needed to balance enrollments at large installations against small installations for purposes of economic viability. We also concluded that there was nothing legally objectionable in making an "unnecessary duplication" determination on a theater-wide basis.

Subsequent to the first protest, the OSD issued permanent guidance with regard to the making of "unnecessary duplication" determinations. See Department of Defense Instruction (DODI), No. 1322.19 (May 9, 1988), codified at 32 C.F.R. pt. 72 (1988). That DODI differs from the interim guidance in that it eliminates consideration of status of forces agreements in making "unnecessary duplication" determinations and allows the determination and finding (D&F) to be

based upon satisfaction of any one of four enumerated criteria rather than all four criteria. The four criteria, one of which must be satisfied to limit the number of providers of postsecondary education services, are that the demographic distribution of the potential student population prevents the effective delivery of education services by multiple providers, adequate classroom and administrative space to meet education program needs is unavailable, educational staff need to manage education programs at the installation level is not available, and the theater commander cannot provide reasonable logistic support to multiple providers.

### The European theater

Currently in the European theater, the three branches of the armed forces receive their educational services under separate contracts which were entered into prior to the passage of section 1212(b) supra. The majority of educational services in the European theater are procured by the Army and the Air Force, due primarily to the significantly larger number of installations which these two branches of the services maintain in Europe. Under the current contracts, the Air Force maintains a "single provider" system under which each course category is offered theater-wide by a single institution. This current arrangement involves services being rendered pursuant to four separate contracts which were awarded to four separate institutions. The Army currently maintains a "multiple provider" system called the Contracted Education Services Program (CESPRO). Under the Army scheme, educational providers compete at each "military community" for the exclusive right to offer a particular course category. Currently the Army retains under contract some five educational institutions.<sup>1/</sup>

### The Current RFP

The solicitation which is the subject of the current protest is based upon a D&F issued by the cognizant authority on September 7, 1988.<sup>2/</sup> That D&F provides authorization to

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1/ The current educational provider systems in the European theater are discussed in a 1987 report of this Office, DOD Voluntary Education; Determining and Meeting Postsecondary Education Needs in Europe, GAO/HRD-88-12, December 1987.

2/ When issued, the D&F contemplated the provision of educational services for only the Army and the Air Force in a geographical area roughly comprised of continental Europe Great Britain and the Sinai. Subsequently, the RFP was  
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limit the offering of any particular group of courses to a single academic institution, pursuant to DODI 1322.19, supra, to avoid duplication of services. It specifically finds that the demographic distribution of the student population in the theater precludes the effective delivery of services by more than one institution and necessitates the balancing of enrollments at large installations against small installations; that there is inadequate administrative office and classroom space to accommodate more than one provider per course category; that logistical support for contractors is only on an "as-available" basis and cannot reasonably be extended to multiple providers; and that there is insufficient Department of Defense educational staff to manage multiple providers.

The RFP provides for the award of one or more contracts on the basis of essentially nine contract line item numbers (CLINs). Each CLIN is comprised of a discrete group of courses, for example, lower level vocational technical training, lower level liberal arts, upper level liberal arts, etc. In addition, the RFP contemplates the award of one or more base year contracts and provides for the exercise of options for up to an additional 4 years.

In terms of performance requirements, the RFP requires contractors to offer "programs" at all Army, Navy and Air Force sites, communities and locations (numbering in excess of 600) but requires that actual instruction be given only at some 184 locations.

The protester argues that the Army's decision to preclude more than one institution from offering courses in a given course category and finding of "unnecessary duplication" in the European theater is violative of section 1212(b) supra, and is unsupportable in the European theater. Specifically, CCC argues that, as to the geographic area, the European theater is a small, densely organized field of operation. CCC notes by way of comparison that the Pacific theater, which was the area involved in the prior protest under section 1212(b), is a vastly larger area covering thousands of miles in which travel is difficult. In this regard, CCC points out that Japan alone is roughly the same size as the European theater in terms of distance. Also in this regard, CCC points out that, unlike the Pacific theater, the European theater is an area which is equipped with the widest variety and greatest concentration of transportation resources including modern highways and roadways, railroads

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amended to include services for the Navy and to include the countries of Iceland and Bahrain.

and metropolitan mass transit systems. Moreover, while CCC acknowledges the existence of a few remote locations within the European theater (e.g., Iceland, the Sinai, Bahrain) it argues that these few remote locations cannot be used as a pretext upon which to base a determination to eliminate multiple providers in the European theater which is, in the main, compact.

As to the demographic distribution of the potential student population, CCC argues that, on the whole, potential students are located either at closely-clustered large installations or at satellite locations in close proximity to the larger installations. In support of this argument, CCC points out that well over half of all the military installations in the European theater are located in Germany alone and that similarly large "clusters" exist in England and other parts of Europe. In addition, CCC points out that the "satellite locations," which in many instances are no more than 5 miles distance from their larger supporting installations have mass transit systems and sophisticated road systems connecting them to larger bases, providing easy access for students commuting for purposes of receiving instruction. In this respect, CCC suggests that the Army's use of the over 500 remote locations in support of its D&F is misleading, since educational providers are required under the RFP to give instruction at only 184 locations, thereby necessitating some travel by at least a portion of the student body.

As to the unavailability of logistical support for contractors in the European theater, CCC argues that there exists no requirement that the agency provide unlimited logistical support such as administrative office space and military communications networks. In this regard, CCC points out that this is tacitly acknowledged in the RFP which states that the various logistical support requirements will only be provided to contractors on an "as available" basis. CCC also notes in this regard that it (and presumably other contractors now servicing the European theater) currently maintains at its own expense administrative office space and telecommunications facilities. CCC makes a similar argument with regard to the provision of classroom space.

Finally, as to the unavailability of Department of Defense (DOD) educational staff, CCC alleges that the agency has provided no support for its assertion that the DOD educational staff currently available will be less burdened by a "single provider" system than a "multiple provider" system.

In sum, CCC challenges the Army's determination that only a "single provider" system is practicable, arguing that the

continued existence of a "multiple provider" system (i.e. CESPRO) along with the current presence of some nine educational providers in the theater suggests that the Army's D&F is based essentially upon administrative convenience. We are unpersuaded by these arguments.

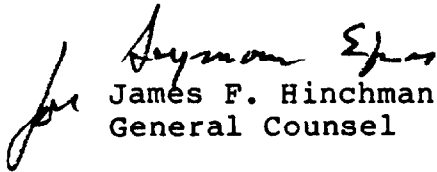
As we noted in our previous decisions regarding section 1212(b), our Office's review of the agency's actions in limiting the award of course groups to a single institution is limited to consideration of whether the agency's actions are reasonable and within the statute's requirements. In this regard, we emphasized as well that there was nothing legally objectionable in the procuring agency giving consideration to economic and logistical concerns in its decision making nor was there anything legally objectionable in an agency giving consideration to these factors on a theater-wide basis where it concludes that this is the most practicable method of assessing its needs. We reached these conclusions based upon our opinion that Congress, in passing the statute, intended to give the Secretary of Defense or his designee the responsibility to determine how to most advantageously meet the needs of the military student population based on the statutory language.

Here, we cannot conclude that the Army has acted unreasonably in limiting to a single provider any particular group of courses. As to the distribution of the potential student population, the record shows that, in fact, far less of the potential student population is stationed at large bases than CCC contends in support of its position. The Army states that, while there exist certain "clusters" in the European theater, there are also many remote sites which are a substantial distance apart. The Army points out, and the record shows, that two-thirds of the entire Army population in Europe are stationed at installations of 1,000 or less personnel and that there are some 200 remote Army installations with less than 500 service members. In this regard, the Army points out that many soldiers who are stationed at remote sub-locations are constrained by either the nature of the mission which they are conducting (i.e. cannot leave their duty stations) or simply the lack of transportation facilities which CCC alleges to exist. As to the Air Force presence in Europe, the record shows that 57 percent of the Air Force personnel are stationed at installations of 2,500 personnel or less and that there are some 140 remote sites with populations ranging from 10 to 1,050 service members.

The Army's D&F reveals that the Army intends to use the student populations at large installations to counterbalance uneconomic enrollment levels at smaller locations. We think this is consistent with the regulations which specifically

permit the agency to consider in its determination the demographic distribution of the student population. See 32 C.F.R. § 72.4(b)(1) (1988). Specifically, the agency, taking into account economic considerations, determined that limiting the number of providers will enable offerors to provide services at small geographically remote installations as well as large bases. Such a determination necessarily involves the exercise of judgment and discretion. Based on this record, we cannot conclude that the Army's finding is unreasonable. As stated above, the regulations provide that the number of providers may be limited if any one of the enumerated criteria is satisfied. Since we have found that the agency reasonably determined that demographic considerations justified limiting the number of providers, we do not need to consider the other arguments advanced by the protester.

The protest is denied.

  
James F. Hinchman  
General Counsel